

To his Grace, His Majesties High Commissioner, and
the Honourable Estates of Parliament,
The Report from the Commission anent the
Pole, 1693.

TH E Parliament having turned the Tack of the Pole 1693, to a Collection, and impowered a Commission of their own Number to see the Money applyed for payment of the Arrears due to the Countrey and Army, as it was designed by the Act Imposing the same; and for that effect to call the Tacks-men to an Accompt for their Intromissions, and to do every thing necessary thereanent, for in-bringing what was resting thereof by the Countrey, or to Roup the whole of the said Pole-Money to the highest Offerer, the *minimum* being always Thirty thousand Pound Sterling.

The Commission in prosecution of their Trust, finding the greatest part of the Pole to be uplifted, and that the Expenses of uplifting the rest, would Exhaust what would be recovered: They after due Intimation, did Roup the Pole, and the old Tacks-men refusing to offer the *minimum* appointed by the Parliament, the same was Set to my Lord Belhaven, the Lairds of Grant, Houstoun, Sornbeg, and other Officers, for the said Thirty thousand Pound.

When the Commission had Set the said Pole, they after many *Sederunts*, and with much difficulty, got the old Tacks-men and their Collectors to produce their Accompts, and Sign the same as true Accompts, under the Certification contained in the Act of Parliament, except *Walter Lockhart of Kirkcoun*, who was always willing to obey the Orders of the Commission. And at last, the old Tacks-men payed in the Sum of Nine thousand Pound Sterling to the Cash-keeper, in obedience to the Commissions order; which, with the Sum of other Nine thousand Pounds or thereby, formerly payed in by them to the Cash-keeper, extends in the baill to the Sum of Eighteen thousand Pound Sterling or thereby; So that there remains still in the old Tacks-mens hands, conform to the Accompts given in by themselves, the Sum of Six thousand pounds Sterling or thereby; which, with the *Superplus* remaining in the new Tacks-mens hands, extends to the Sum of Thirty thousand Pounds Sterling.

Likewise the Commission did draw Precepts for the Sum of Ten thousand Pounds Sterling and above, upon the Cash-keeper, for paying of the Arriars to the Countrey, conform to the stated Accounts approven by the Lords of His Majesties Privy Council, and recommended to them; which with the former payments made by the Cash-keeper, upon the Thesaurers Precepts, does extend to Sixteen thousand Pounds Sterling and more, which fully satisfies the Arriars due to the Countrey, so that there remains allanerly for payment of the Officers and Army Thirteen thousand Pounds and some odds, which is still in the Hands of the present and old Tacks-men, except the Sum of One thousand Pounds Sterl. or thereby, which is in the Cash-keepers Hands.

Some of the Officers of the Army pressing payment of their Proportion of that Sum, and the old Tacks-men urging to have Six thousand Pound allowed them for their Expenses, conform to a condescendence given in by them: The Commission considering the Certification laid on them by the Act of Parliament, in case of misapplication, thought it in all humility fit to remit the old Tacks-mens Expenses to the Parliament: As also, to propose the difficulties following, that the same may be cleared by the Parliament, and that thereafter there may be a new Commission chosen for ending that Affair of the Pole, who will be encouraged thereto, by taking off the said Certification, and giving them full and ample power to put their Orders and Decrets in Execution; by all Legal Compulsitors.

The difficulty as to allowing of Expenses to the old Tacks-men lyes here, that the Officers contend, that if the Six thousand pounds in the old Tacks-mens hands be allowed for their Expenses, there will remain little more than a thousand pounds *Sterling*, to pay fourty thousand pounds of Arriars to them, in respect the new Tacks-men will not be lyable for the *superplus*, to which they are obliged by their Tack, if the old Tacks-men be free of their Vintuples (which freedom they acclaim on the ground after-mentioned) whereby the old Tacks-men will pay but eighteen thousand pounds *Sterling*, for four and fourty thousand pound of their Tack-duty, and the Officers will only get a thousand pound *sterling* or thereby, in place of four and fourty thousand pounds of Tack-duty.

And upon the other hand, the old Tacks-men alledged, that the Pole being a new Imposition, the value and import thereof, could only be guessed, and the ways and methods for in-gathering thereof being untrodden Paths, they ought to have Expenses conform to their condescendence, they having made the offer of so great a Tack-duty, out of zeal to His Majesties service, upon which ground the Parliament did turn their Tack into a Collection, and did remit to the Commission to allow Expenses, if they thought fit, but did not refuse them Expenses, as they did Sallaries by the Act. And the Officers may see that the short-coming of the Fond is not occasioned by the fault of the old Tacks-men, since the new Pole which was looked upon as a better Fond by the Parliament, cannot be Roused above twenty thousand three hundred pounds.

The next difficulty that occurs to the Commission, is anent the *Vintuples*, which the old Tacks-men contend they can only be lyable to for omissions, of Intromissions had by themselves, but not by their Sub-Collectors, because it is a rigorous and severe penalty, which ought not to be extended against them, when they themselves omit nothing; And that the Act doth not expressly say that they shall be lyable for the omissions of their Sub-Collectors: and far less (as they contend) should they be lyable every one *in solidum*, for the omissions of Sub-Collectors appointed by any of their number.

Upon the other hand, the Officers alledge that the *Vintuple* is not a Penalty, but an express condition and quality of the Conversion, without which the Tack would never have been turned into a Collection and therefore the Act of Parliament appointing that the Tacks-men should be liable for the Sub-Collectors and Managers imployed by them, as the first of the conditions contained in the Act. And the third condition bearing, that if there were any thing received from the Countrey, and not given up in the Books, the Tacks-men or their Sub-Collectors should be lyable in twenty shilling for each shilling

Shilling so omitted, the Tacks-men ought to be lyable *in solidum* for their Sub-Collectors concealments, since the Legal obligation introduced by the Act of Parliament, must be of the same nature with the first obligation of the Tack to which it is accessory, whereby the Tacks-men are bound *in solidum*; and if it were otherways, the offer would be elusory, the Officers and new Tacks-men not knowing the Sub-Collectors: And there being many of them, the pursuing of them for the *Vintuples* would occasion more expenses than what would be recovered; nor can the Sub-Collectors be lyable for the *Vintuples*, they neither having desired the said conversion, nor having any benefite thereby; neither would the new Tacks-men have obliged themselves for thirty thousand pounds, but in contemplation of the *Vintuples* to be gotten off the old Tacks-men in case of concealments, which is clearly imported in the new Tack. So that if the old Tacks-men be free of the *Vintuples* for their Sub-Collectors omissions, the new Tacks-men must be altogether free of their Tack. In which case, allowing the old Tacks-men six thousand pound of expenses acclaimed by them still in their own hand, there will only remain one thousand pound or thereby, to pay fourty thousand pound *Sterling* of Arriars to the Army, as is represented before.

The other difficulty occurring to the Commission, is this, whether the Arrears due to the Centinels, as well as Officers, be to come in *Computo*, or only the Arrears due to the Officers, be to be payed out of this *Fond*. It being presumed that the Centinels were Maintained by the Countrey. And if the Arrears due to the Centinels must come in *Computo*, if it must be payed to the Officers upon this presumption, that they maintained the Centinels without any Right from the Centinels, and to what Officers it must be payed, whether to the Colonels for their Regiments, or the Captains for their Companies: And if the Subaltern Officers, such as Lieutenants, Ensigns, Serjeants, should get their own Pay; or if it should be payed in to their Colonels or Captains; &c. and what form of edictal Citation, shal be used for excluding all those who shal not Compear at the day appointed.

And in case the Parliament allow only the Arrears due to Officers, to be payed out of the *Pole*, then it would be cleared, whether that which is payed to the Countrey for the Arrears due by a Regiment, should be deduced for bringing all the Regiments and Troops upon an equal foot; It appearing hard in the one hand, that that which is payed as the Arrears to the Countrey for Maintainance of the Centinels, should be deduced when the Officers only demand their own Pay, and on the other hand, it seems strange, that two Collonels, U, G. to whom a like Months Pay are due, should get alike Pay, when there is possibly tenthousand Pound payed of Arrears to the Countrey, for Maintainance of the one Regiment, out of this *Fond* of the *Pole*, and not a six Pence payed furth thereof, for Maintainance of the other.